

Department of Marine Resources NOTICE OF AGENCY RULE-MAKING PROPOSAL

RULE TITLE OR SUBJECT: Chapter 22 Retail Shellfish (New), & Chapter 9.01(D) Update

CONCISE SUMMARY: Regulations for holders of an enhanced retail seafood license (12 MRSA §6852, sub-§2, effective September 12, 2009) are proposed for traceability of shellfish via record keeping, landings reporting, temperature control, and prevention of cross contamination, tag retention, non-compliance consequences, and inspection in accordance with the Maine Food Code, the National Shellfish Sanitation Program (Model Ordinance), the Atlantic States Coastal Cooperative Statistics Program and DMR Landings Program. Compliance with the Landings Program would require obtaining a no-cost Primary Buyer Permit; and the inspections would apply only to those not already inspected by other agencies.

STATUTORY AUTHORITY: 12 M.R.S. §6852

PUBLIC HEARING: Tues., **October 27, 2009, 6:00pm**, DMR Large Conference Room, 194 McKown Point Road, West Boothbay Harbor

DEADLINE FOR COMMENTS: **November 6, 2009**

To ensure consideration, comments must include your name and the organization you represent, if any. Please be aware that any risk of non-delivery associated with submissions by fax or e-mail is on the sender.

AGENCY CONTACT PERSON: **Bruce Chamberlain (207- 557-3557)**

Mail Written Comments to:

AGENCY NAME:	Department of Marine Resources, attn L. Churchill
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Hearing facilities:	If you require accommodations due to disability, please contact Amanda Beckwith, at (207) 287-7578.

Additional information:

Current law does not allow the holder of a retail seafood license to buy shellstock directly from the commercial shellfish license holder that harvests the shellfish but instead these license holders must buy shellstock from a wholesale seafood license holder that purchases shellstock from the harvester. The proposed regulations would allow enhanced retail seafood license holders to purchase shellstock directly from the harvester in compliance with the Maine Food Code, the National Shellfish Sanitation Program (Model Ordinance), the Atlantic States Coastal Cooperative Statistics Program and DMR Landings Program.

Proposed rulemaking – see underlined or ~~deleted~~ text below:

DEPARTMENT OF MARINE RESOURCES

Chapter 9 HARVESTER: SHELLSTOCK HARVESTING, HANDLING AND SANITATION

9.01 Compliance

- D. Harvesters licensed pursuant to 12 M.R.S. §6601, §6731, §6732, §6745 and §6746 may sell shellstock the holder has taken only to wholesale seafood license holders certified in accordance with §6856. Exception: a harvester license holder may sell shellstock the holder has taken from that license holder's home in the retail trade pursuant to §6601 and to the holder of an enhanced retail seafood license pursuant to 12 M.R.S. §6852(2).

Chapter 22 RETAIL SHELLFISH

22.01 Enhanced Retail Seafood license holders - compliance

- A. Commingling of shellstock is prohibited.
- B. Enhanced Retail Seafood license holders may not conduct wet storage activities. Wet storage of shellstock is prohibited, except by certified dealers pursuant to a current permit issued by the Department in accordance with Chapter 15.
- C. Shellstock received by an enhanced retail seafood license holder shall be tagged, with the harvester tag pursuant to Chapter 9.06, or certified dealer's tag pursuant to Chapter 15.18. All tags shall be maintained on file for 90 days.

- D. For purposes of this chapter the definitions in Chapter 15 shall apply.
- E. Activities are limited to retail sales only from the enhanced seafood license holder's facility. Interstate commerce is prohibited in accordance with 12 M.R.S. §6601 sub-§2.

22.02 Receiving Shellfish

- A. The enhanced retail seafood license holder shall reject or discard any shellfish which:
 - 1. Do not originate from a licensed harvester or dealer; and/or
 - 2. Are unwholesome, inadequately protected or whose source cannot be identified.
- B. The enhanced retail seafood license holder shall:
 - 1. Place shellstock under temperature control within 2 hours after receipt from the harvester.
 - 2. For the purpose of this section, temperature control is defined in accordance with Maine Food Code, Chapter 200, §3-202.11 Specifications for Receiving, Temperature.

22.03 Prevention of Cross Contamination

- A. Shellstock shall be stored in a manner as to be protected from contamination.
- B. If equipment has been used for a species other than shellfish it shall be washed, rinsed and sanitized prior to use for shellstock.
- C. Shellstock shall not be placed into water.
- D. Shellstock coolers shall not be used for storage of bait, other fish processing byproducts or refuse.
 - 1. Only food grade product may be stored in the cooler physically separated from shellstock and shellfish.
- E. Shellstock shall be stored in a protected location and at an adequate height off the floor to protect it from contamination from water accumulation on the floor or splash by foot traffic.
- F. The enhanced retail seafood license holder shall require all employees to wash, rinse and sanitize their hands thoroughly in a hand washing facility;
 - 1. Before starting work;
 - 2. After each absence from the work station;
 - 3. After each work interruption; and
 - 4. Any time their hands may have become soiled or contaminated.
- G. No unauthorized personnel shall be allowed to handle shellstock. The employee shall wear a clean apron or other clean outer garments when handling shellstock.

22.04 Records

- A. Each enhanced retail seafood license holder must maintain records pertaining to all shellfish purchases and shellfish shipments received. These records must be made available to the Department upon request and must comply with the following criteria:
 - 1. Each enhanced retail seafood license holder shall have a business address at which records are maintained.
 - 2. Records shall:
 - (a) Be complete, accurate and legible;
 - (b) Contain all of the Department's required information in a form authorized by the Department; and
 - 3. The records must be sufficient to:
 - (a) Document that the shellstock was obtained from an authorized source (licensed harvester or certified dealer);
 - (b) Allow each container of shellstock to be traced back to the specific incoming lot of shellstock from which it was taken; and
 - (c) Allow for each lot of shellstock to be traced back to the growing area, date of harvest, and if possible, the harvester or group of harvesters.
 - 4. Records shall be maintained in a permanently bound ledger book or other recording method approved by the Department.
 - 5. The records shall be retained:
 - (a) For a minimum of one year for fresh shellstock and for a minimum of two years for frozen shellstock.
- C. Shellfish Reports: See Chapter 8.10(A) Landings Program; a no-cost Primary Buyers Permit is required.

22.05 Suspension, Revocation or Refusal to Reissue an Enhanced Retail Seafood License

- A. Suspension or Revocation
 - 1. The Commissioner may apply to the District Court for suspension of an enhanced retail seafood license where the holder has refused to allow a shellfish inspection or has violated a shellfish sanitation regulation. As provided by 12 M.R.S. §6373, the Commissioner may apply for suspension in a summary action before the district court pursuant to the provisions of 4 M.R.S. §184.

2. The Commissioner may suspend an enhanced retail seafood license under 12 M.R.S. §6401 where the holder has been convicted of a violation of a marine resources law. The Commissioner shall follow the procedures set forth in 12 M.R.S. §§6351 to 6353 to impose such a suspension.
- B. When the Department determines that a condition exists that presents an immediate threat to public health the Department may take any or all of the following actions to protect the public health:
1. Suspend the enhanced retail seafood license in accordance with M.R.S. 5 §10004 (3 & 4);
 2. Require the holder of the enhanced retail seafood license to initiate a recall consistent with the procedures in Chapter 15.36, of any distributed shellfish or shellstock that are adulterated or may have become adulterated; and
 3. Embargo and destroy any undistributed lots of shellstock that are adulterated or may have become adulterated consistent with the provisions of Chapter 15.23.
- C. If the Commissioner determines that an applicant for renewal of an enhanced retail seafood license is not currently in compliance with shellfish sanitation regulations, or has failed to comply with shellfish sanitation regulations during the previous license period, the Commissioner may refuse renewal of the license in accordance with the following procedures:
1. The Commissioner shall advise the applicant for renewal by certified mail, return receipt requested, of the refusal and the grounds for this refusal.
 2. The Commissioner shall advise the applicant for renewal that the applicant has a right to request that an adjudicatory hearing be held before the Department in conformity with 5 M.R.S., Chapter 375 subchapter IV. The Commissioner shall advise the applicant that the hearing must be requested in writing and that the written request must be received by the Department no later than 10 days of receipt by the applicant of the notice, by certified mail, of refusal to renew the shellfish certificate.
 3. If an adjudicatory hearing is requested, the Commissioner shall schedule a hearing within 10 days of the Department's receipt of the written request for hearing, unless a longer period is mutually agreed to in writing.
 4. Notice of the hearing date, time and location shall be given immediately to the applicant.

If you are unable to attend the hearing persons are encouraged to submit written comments from the receipt or posting of this notice through close of business on the deadline listed.